

Number: 2004-2a
Date: January 2005

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Subject: **OPERATIONAL Procedures for the Administration of the City of
Boston Shopping Cart Retention Ordinance 16-12.8A**

Purpose: The purpose of this bulletin is to set forth the process and procedure used by the City of Boston in administering the City of Boston Code ("C.B.C") Ordinance c. 16-12.8A

GENERAL CONSIDERATIONS:

- The ISD Commissioner can promulgate rules and regulations pursuant to CBC c. 16-12.8A.10
- References to the word "ordinance" in this bulletin shall mean the Shopping Cart Retention Ordinance.
- DPW shall refer to the Department of Public Works.
- ESD shall mean the Environmental Services Division of Inspectional Services.
- Commissioner shall mean the ISD Commissioner, unless otherwise stated.
- ISD personnel shall refer to any party to whom authority to enforce this ordinance has been delegated, including but not limited to the Environmental Services Division and the Code Enforcement Division.

DETERMINATION:

In administering the ordinance, the ISD shall adhere to the following protocols:

1.0 Enforcement

Enforcement shall be carried out against a particular business in response to written complaints regarding alleged non-compliance issues or during annual inspections. Otherwise, ISD will act on all reports of a cart off the business premises. Fines shall issue for violations only after the protocols set out below have been followed:

1.1 Carts found on the public way

1. Determine ownership and issue a warning ticket for any cart found on the public way, affix the ticket to the cart so as to ensure that it will not be blown off or easily removed.* Warning tickets will be submitted at 1010 Mass Avenue for data entry in the same format as fine tickets and mailed to the business address on file.
2. Once the green warning ticket has been affixed, field personnel shall radio to 1010 Mass. Ave the location and time the cart is observed off the property. Staff at 1010 Mass. Ave will enter the information into an electronic database.

3. Staff at 1010 Mass. Ave. will then make contact with the business liaison on file with ISD , (See 2004-3 s. 1.1), preferably by an electronic mail message to inform the business that a cart has been found off the premises and needs to be removed.
4. If the cart remains off the premises after a 12 hour period has elapsed from the time that the ISD personnel originally observed the cart, the ISD personnel shall remove the warning ticket and issue a second ticket with a fine and affix such ticket with the fine to the shopping cart. ISD personnel shall submit all tickets issued in the same manner as all other tickets issued pursuant to G.L. c. 40 s. 21D.
5. ISD personnel shall then contact 1010 Mass. Ave. with the location, time and other relevant cart information. Upon receiving such information, staff at 1010 Mass. Ave. shall send an electronic mail message with the relevant information including specific location, time it was observed and any other information to a staff person at DPW for DPW to pick up and store. An ISD manager may choose to dispatch a department vehicle to pick up the offending shopping cart.
6. ISD staff at 1010 Mass. Ave. shall also ascertain the storage location selected by DPW and identify it on the embargo form with other needed information obtained in # 5 above. The form will be mailed immediately to the business as set out in section 3.0 Notice of Impoundment.

*If the cart has no identifying information ISD personnel shall contact 1010 Mass. Ave. to have it removed immediately.

1.2 Carts found without permanent identity tags on the property

1. After February 28, 2005, upon observing carts on the business property without permanent identity tags as required by the ordinance, staff will ask for the business owner/manager or his designee to discuss the situation.
2. ISD personnel will explain the alleged non-compliance with permanent identity tag requirements and instruct the business owner/manager to contact the Assistant Commissioner of Environmental Services or his designee if there are any further questions regarding the ordinance.
3. ISD personnel shall then issue a warning ticket and inform the manager that continued non-compliance will result in fines, **including** a fine for each cart not in compliance.
4. ISD personnel shall re-visit non-compliant businesses for a compliance re-inspection any time after the fourteenth (14) day from the date of the initial inspection.
5. Upon a re-inspection, ISD personnel shall issue a ticketed fine for each cart without a permanent identity tag or a non-compliant identity tag as outlined above in Section 2.0

1.3 Failure to comply with retention plan or otherwise failing to comply with ordinance provisions.

In instances where ISD personnel believe that terms of the ordinance are not being complied with, they shall consult with a supervisor. If the supervisor concurs that there is an instance of non-compliance with a retention plan, the supervisor may advise the business to attend a compliance meeting with staff at 1010 Mass. Avenue before issuing

any fines. All businesses should have a copy of the retention plan available on site for ISD personnel to examine during a site inspection.

No less than seven (7) days after such infraction or compliance meeting ISD personnel shall revisit the business to ensure compliance. Continued non-compliance will result in fines.

1.4 Chronic violators: ISD personnel shall forward any business subject to repeated fine violations aggregating in the following way to the Division manager for further action:

1. More than 5 tickets for carts off the premises in one (1) month for two (2) consecutive months;
2. More than 5 tickets in one (1) month for a period two (2) consecutive months for failure to adequately provide permanent identity tags on carts;
3. More than 3 violations a month for a period of two (2) consecutive months for failure to conform with the retention plan in place.

Such notice to the Assistant Commissioner shall be in writing and contain as much specific information and documentation as possible. ISD will then pursue administrative remedies available against chronic violators to effect compliance, including but not limited to suspension or revocation of licenses, permits and certificates as the law will allow.

2.0 Annual Monitoring and Compliance Requirements:

2.1 Annual review: ISD personnel, on a regular basis, shall conduct spot checks of all businesses known to use shopping carts to ensure proper compliance and understanding of ordinance. The Assistant Commissioner of Environmental Services shall organize a system within 90 days of this ordinance's publication for conducting such checks.

3.0 Notice of impoundment:

ISD will conform with the notice requirements of the ordinance by using the personal property embargo form and process set forth by Commissioner's Bulletin 2002-18 when removing carts from the public way. Staff at 1010 Mass. Ave. upon receiving a report of a cart that has not been removed after the 12 hour period, will complete the embargo form based on information relayed from the field and note on the form the DPW or ISD storage location, number of carts impounded and the ticket numbers for each fine attached to each cart. ESD will arrange with DPW a means to correspond either by radio or otherwise the determined DPW drop off location. One form may be used where multiple carts found at one location belong to the same business. One copy of the embargo form shall be mailed first class to the liaison for the business at the address filed annually with the Department no later than the third day from the impoundment. A copy of the embargo form must be kept on file at ESD. A form letter will also be included in the mailed embargo form explicitly stating that the carts will be discarded if not picked up within 60 days and informing the business of a right to a hearing on the storage issue.

4.0 Process for Storage and the Release of Carts:

4.1 Cart check-in: All carts removed by DPW will be stored in accordance with and at a location determined by DPW, except that ISD will note on the embargo form where and

when DPW has dropped off the cart for storage. When a cart is removed from the public way by ISD, ISD will:

1. Store the carts at a location in the City of Boston deemed appropriate by the Assistant Commissioner of Environmental Services.
2. Ensure that the embargo forms and the database note the cart and cart storage location reported by ISD or DPW.
3. Check in carts by the fine ticket numbers issued and affixed to them. ISD staff placing the carts into storage shall radio to staff at 1010 Mass. Ave. the time, location and number of carts dropped off. ISD shall submit storage information on a regular basis to the Collector Treasurer for billing purposes.

4.2 Payment: All fees and fines must be paid before ISD will release any cart to a business. All payments will be made at the Collector Treasurer's office at Boston City Hall, who shall also manage accounts receivable for debts incurred under this ordinance.

4.2a Means of Payment: The Collector Treasurer will accept payment for all fines and fees in the manner it deems appropriate. The Collector Treasurer shall manage for payment and collection purposes all debts relative to the ordinance. ESD will submit to the Collector Treasurer on a regular basis fines in same manner as all other G.L. c. 40 s. 21D fines and where relevant accompanying fees for removal and storage of carts. ESD and the Collector Treasurer will develop a system for payment of such fees by March 1, 2005. ESD and the Collector Treasurer shall agree upon a process by which ESD will get timely notice of all payments made under this ordinance for release of carts.

Prior to gaining the release of any carts, a business must present a copy of the embargo form and the receipt or other evidence of payment provided by the Collector Treasurer that the outstanding debts have been paid. ESD staff may verify this payment in the database or with the Collector Treasurer, if requested by staff at the storage location at the time of retrieval.

4.3 Pick up and Tracking release of carts. ISD staff will be present at the cart pick up location during the appointed pick up times established in Section 4.4 below. ISD staff will only release carts to a business after following these protocols:

1. ISD shall only release carts to businesses who present an embargo form and evidence of payment to the Collector Treasurer.
2. ISD staff on scene shall note on the embargo form the name of the person picking up, the date, Collector Treasurer receipt number, and the number of carts retrieved.
3. ISD staff will check the ticket numbers on the embargo form to verify the right carts are released with the corresponding ticket attached to it.
4. ISD staff shall obtain a signature from the receiving party on the embargo form acknowledging receipt of the carts.
5. Upon release of the carts, staff shall keep the embargo form countersigned in accordance with numbers 2, 3 and 4 above and return the form to ESD to keep on file.

4.4 Time for Reclaiming: ISD shall establish a specific time on either weekly or daily basis at the discretion of the Commissioner whereby a party may come to retrieve a cart in ISD custody.

4.3 Discarding unclaimed carts: ISD will discard all unclaimed carts sixty (60) days after the date upon which the City took custody of the carts. No additional notice will be mailed to the party on file beyond the embargo form.

5.0 Hearings:

5.1 Hearing requests: ISD staff shall inform any business seeking a hearing under this ordinance that ISD administrative hearings are only granted to contest a warning ticket or the amount of accrued storage fees. The request for a hearing must be submitted in writing within fifteen (15) days of the warning or removal of a cart. **A BUSINESS MAY APPEAL A FINE VIOLATION ONLY TO THE BOSTON HOUSING COURT PURSUANT TO G.L. c. 40 s. 21D.**

5.2 Date and Time of hearing: A hearing shall be held on all valid written requests from an aggrieved party within 15 days of receipt of the request from the party.

5.3 Hearing process: All hearings shall proceed in accordance with Commissioner's Bulletins 2002-2 and 2A and the general administrative practices of the department regarding hearings. All hearings shall result in a written hearing decision issued within the seven (7) day period stated in Commissioner's Bulletin 2002-2A. The decision will be mailed to the address on file with ISD.

6.0 Review of procedures provision: ISD together with the DPW shall revisit the protocols set forth in this bulletin to examine their effectiveness, amend them, expand or delete them as the parties may see fit. Otherwise enforcement and administration of this Ordinance shall be done in a manner consistent with this bulletin.



Signed: William J. Good, III
Commissioner
Inspectional Services Department
Date: 3/31/05



Signed: Leo Boucher
Assistant Commissioner,
Environmental Services Division, ISD
Date: 1/31/05